

EXHIBIT A

TO THE DECLARATION OF CLAUDE D. MONTGOMERY, ESQ.

**In the Matter Of:**  
**CITY OF DETROIT, MICHIGAN**

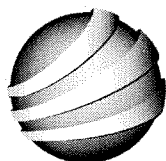
Case NO. 13-53846

---

**KEVYN ORR**

*September 16, 2013*

---



**ESQUIRE**  
SOLUTIONS

800.211.DEPO (3376)  
[EsquireSolutions.com](http://EsquireSolutions.com)

1 A. Yes.

2 Q. -- you're talking again -- at this point in time had  
3 you decided whether to accept the Emergency Manager  
4 job? This is later in the afternoon on January 31.

5 A. No, I didn't. I -- no, there was no time in the  
6 initial two days that this came up that I decided to  
7 accept the Emergency Manager job.

8 Q. Okay. And in this email you're giving some thoughts  
9 on some of the issues that pertain to that; aren't  
10 you?

11 A. Yes.

12 Q. And in particular you start talking about the  
13 legislation that pertains to the EM position. You  
14 said you went back and reviewed various laws; do you  
15 see that?

16 A. Yes.

17 Q. And you talked about some laws in DC control board and  
18 then you go on in the last sentence -- or I'm sorry,  
19 the second to the last sentence to write, and I quote,  
20 "By contrast Michigan's new EM law is a clear  
21 end-around the prior initiative that was rejected by  
22 the voters in November."

23 You wrote that?

24 A. Yes.

25 Q. And by the new EM law, you were referring to PA 436?



1 Q. And you go on then in the -- and you were -- I guess  
2 -- were you aware that for either the case of the  
3 Chapter 9 being filed with the governor's approval  
4 without the Emergency Manager being involved or the  
5 Chapter 9 filing with the Emergency Manager, that in  
6 either case PA 436 did not require the governor to  
7 impose any contingencies on the bankruptcy filing?

8 MR. SHUMAKER: Objection, calls for legal  
9 conclusion.

10 A. I don't recall if I had done a deep dive in that  
11 question at this time. Please understand, counselor,  
12 at this time I was doing a preliminary review of the  
13 statute based upon I believe some published reports  
14 and a look at it online. I may have gotten to that  
15 point, I just don't recall if at this time during that  
16 day I had.

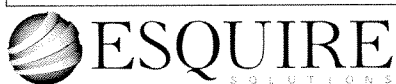
17 Q. Okay.

18 A. But I did at some point.

19 Q. But you certainly knew that ultimately?

20 A. At some point I did, sure.

21 Q. Obviously. And then you go on in the next sentence in  
22 this email to say, "So although the new law provides  
23 the thin veneer of a revision, it is essentially a  
24 redo of the prior rejected law and appears to merely  
25 adopt the conditions necessary for Chapter 9 filing."



1 A. Yes, I said that.

2 Q. And were you writing truthfully when you said that?

3 A. Yeah, and I think the balance of the paragraph, the  
4 news reports state that opponents of the prior law are  
5 already lining up to challenge this law. So as I just  
6 testified, this was my preliminary analysis based upon  
7 a number of sources, some of them were the news  
8 reports.

9 Q. And you were aware in fact that as you just indicated  
10 that there were either challenges already made or that  
11 were going to be made to the law?

12 A. I was not aware that there were challenges already  
13 made. I was aware the news report states that  
14 opponents of the prior law were already lining up to  
15 challenge the law.

16 Q. And did you have any understanding at this time as to  
17 what those grounds of challenge were or may be?

18 A. No. As I said, this was, you know, within the span of  
19 a day when this was going back and forth about what it  
20 may require, I was beginning to familiarize myself to  
21 some degree with the statute.

22 Q. Your email goes on to say you're going to speak with  
23 Baird in a few minutes and see what his thinking is.

24 A. Yes.

25 Q. Did you speak with Mr. Baird that day?



800.211.DEPO (3376)  
EsquireSolutions.com

1 potential ground for challenge, was that it allowed  
2 the governor to authorize a bankruptcy filing without  
3 imposing a condition that would prevent pension  
4 obligations from being impaired?

5 A. I don't know if I was aware of that issue at this  
6 time, no.

7 Q. Well, were you aware -- you became aware of it if not  
8 then at some point shortly thereafter; correct?

9 A. Yeah, let me say this. There was no broad based  
10 concern at this point about with what the authority  
11 was with regards to pensions so any sort of  
12 insinuation that that was the focus at this point is  
13 just inaccurate. That wasn't true. This as I said  
14 before was a very cursory and initial sort of review  
15 of what I was being asked to do so when I had a  
16 discussion with Mr. Baird later I would have some  
17 information and that's what I gleaned based upon a few  
18 hours since apparently I got the call -- I was  
19 informed that day, that morning or the day before to  
20 the time I was going to have a call that afternoon.

21 Q. But I take it at some point in time you became aware  
22 that Article 9, Section 24 of the Michigan  
23 Constitution protects pension benefits from being  
24 diminished or impaired?

25 A. I believe at some point in time I became aware that



1 Article 9, Section 24 purports to protect pensions and  
2 benefits in certain circumstances, yes.

3 MR. ULLMAN: Let's mark Exhibit 5.

4 (Marked Exhibit No. 5.)

5 Q. Exhibit 5 is just a printout of Article 9, Section 24  
6 of the Michigan Constitution. Do you recognize it as  
7 such?

8 A. I mean, the document speaks for itself, but that  
9 appears to be what it is, yes.

10 Q. Okay, and I think your last answer you said that in  
11 your view Section 24, Article 9 purports to protect  
12 pensions and benefits in certain circumstances.

13 A. Yes.

14 Q. And are you contending that the words of Article 9,  
15 Section 24 means something other than what they say?

16 MR. SHUMAKER: Objection, calls for legal  
17 conclusion.

18 A. Yeah, I -- here again, I think the document speaks for  
19 itself. I think that my response to that issue is  
20 throughout the arc of my career, whether in federal  
21 government or in private practice at the Chrysler  
22 case, there have been many state laws, some of them  
23 quite sacrosanct, that have been abrogated by federal  
24 law, not just bankruptcy law. At the RTC we preempted  
25 state, New York state, rent control litigation, law;



1 we preempted California state escheat law; we  
2 preempted -- and that was the model for 50s. In  
3 Chrysler, we preempted 50 states have dealer franchise  
4 laws that were preempted. So when I said I recognize  
5 this, there are federal laws that preempt state laws.

6 MR. ULLMAN: I'm going to move to strike as  
7 nonresponsive.

8 Q. Mr. Orr, I appreciate your perhaps trying to be  
9 helpful, but my question was really very limited and I  
10 would appreciate it if you could just answer it.

11 MR. ULLMAN: Could I have my question read  
12 back, please?

13 (Record read back as requested.)

14 A. I think that calls for a legal conclusion and I  
15 contend that they speak for themselves.

16 Q. Now, you made mention in your -- I think when you were  
17 giving your prior response, you made some allusion to  
18 federal law.

19 A. Uh-huh.

20 Q. Is there any question in your mind that apart from  
21 anything that may come into play under federal law,  
22 that the constitution of Michigan, Article 9, Section  
23 24, prohibits pension rights from being diminished or  
24 impaired?

25 MR. SHUMAKER: Objection, calls for legal



800.211.DEPO (3376)  
EsquireSolutions.com



1 conclusion.

2 A. The document, as I said, speaks for itself. Certainly  
3 I think I've said before that parties can negotiate a  
4 resolution of contracts.

5 Q. That's -- that's not my question.

6 MR. ULLMAN: Could you -- can you read my  
7 question back? If there's anything about it you don't  
8 understand, I would be glad to rephrase.

9 THE WITNESS: Uh-huh.

10 (Record read back as requested.)

11 MR. SHUMAKER: Objection to form, calls for  
12 legal conclusion. You can answer.

13 A. Yeah, I think it does call for legal conclusion, but  
14 as I said, contractual obligations can be negotiated  
15 at any time.

16 Q. Let me rephrase it.

17 You understand what the constitution is  
18 talking about is diminishing or impairing is  
19 nonconsensual; correct?

20 MR. SHUMAKER: Objection, calls for legal  
21 conclusion.

22 Q. Let me rephrase it so there can't be any ambiguity.  
23 Clearly parties can if they so choose change their  
24 contract; rights?

25 A. Yes.



800.211.DEPO (3376)  
EsquireSolutions.com

1 Q. Is there any question in your mind that Article 9,  
2 Section 24 of the Michigan Constitution protects  
3 pension rights from being diminished or impaired if  
4 the beneficiaries of those rights do not agree  
5 consensually to such diminishment or impairment?

6 MR. SHUMAKER: Objection, calls for legal  
7 conclusion.

8 A. I think I've answered that before. I think there's  
9 certain federal laws that allow for preemption --

10 Q. I'm asking about independent of any federal law. The  
11 Michigan Constitution on its own, apart from any  
12 overlay that you say may apply from federal law, is  
13 there any question that the Michigan Constitution,  
14 assuming that the beneficiaries of the retirement  
15 obligations don't consent, any question that in that  
16 circumstance the Michigan Constitution prohibits  
17 pension rights from being diminished or impaired?

18 MR. SHUMAKER: Objection, calls for legal  
19 conclusion.

20 A. Here again, Mr. Ullman, you're asking me -- I'm a fact  
21 30(b)(6) witness, you're asking me for a legal  
22 conclusion about what the statute says. I'll say that  
23 the statute speaks for itself and I certainly have  
24 heard that people take that position.

25 Q. Okay, and I'm asking you -- I'm not asking you to give



800.211.DEPO (3376)  
EsquireSolutions.com

1           wasn't. It was the Emergency Manager's duties writ  
2           large.

3       Q.   And when you say you were pouring over the law, you  
4           yourself were doing legal analysis, reading various  
5           laws; is that right?

6       A.   Yes, I was trying to get background information, yes.

7       Q.   And as part of that background information did you  
8           read Article 9, Section 24 of the Michigan  
9           Constitution?

10      A.   I may have.

11      Q.   Is there any question in your mind that you didn't?

12      A.   I -- if you have a document to refresh my  
13           recollection, I'm happy to look at it. Sitting here  
14           on this day on February 20th, I don't recall whether  
15           or not I read that article of the constitution.

16      Q.   There's no question that at some point after February  
17           20th you read Article 9, Section 24 of the Michigan  
18           Constitution; correct?

19      A.   My testimony is it may have been before or after the  
20           20th. I don't recall whether I did that sitting here  
21           today.

22      Q.   Okay, but it was either one or the other, but you  
23           certainly have read it?

24      A.   Yes, I've read it. I read it today.

25      Q.   And you read it before you became Emergency Manager;



800.211.DEPO (3376)  
EsquireSolutions.com

1 didn't you?

2 A. Yes.

3 Q. One other question on this document actually. As you  
4 look at page 460, at the bottom there's a February 21  
5 email.

6 A. Yes.

7 Q. And it refers to point 8 of the attachment. This  
8 again has to do with the mayor's existing executive  
9 team; right?

10 A. Yes.

11 Q. And in this time -- this is from Mr. Baird again;  
12 right?

13 A. Yes.

14 Q. And he's really explicit. He says, other than a few  
15 grammatical nits, and some more language around point  
16 8, so we can manage expectations if Kevyn needs to  
17 make some personnel changes. So he's clearly  
18 referring here to you making personnel changes that  
19 could affect the mayor's existing executive team;  
20 isn't he?

21 A. Yes, this wasn't written to me, but I'll read it. I  
22 mean to myself. Yes, document speaks for itself, but  
23 that seems to say that.

24 Q. Isn't it clear at this point that it was envisioned  
25 and understood that Kevyn Orr, you Mr. Orr, were in



800.211.DEPO (3376)  
EsquireSolutions.com

1           that right?

2       A.    I believe so.

3       Q.    And did the governor share that view with you?

4       A.    No.

5       Q.    He thought that the pension and OPEB obligations were  
6           not impediments to Detroit's fiscal health?

7       A.    No, the governor -- the only discussion I had with the  
8           governor was at a very high level about the dire  
9           straits of the City and the need for some -- it was  
10          actually the dire straits of the City and the need for  
11          some reform. There was no specific discussion about  
12          pension or OPEB.

13      Q.    Now, at some point after you became the Emergency  
14           Manager, did you have discussions with the governor  
15           about a Chapter 9 filing to among other things get out  
16           of the pension obligations that the City owed?

17                   MR. SHUMAKER: Object to form.

18      A.    Yes, I believe so.

19      Q.    And when did those take place?

20      A.    Since becoming Emergency Manager on the 25th I've had  
21           regular conversations with the governor. Typically  
22           weekly. I don't recall the specific conversation when  
23           they came up. I will say that it wasn't within our  
24           initial conversations.

25      Q.    Okay. And we're talking -- these conversations, are



1 A. I'm taking my time because I'm trying to remember.  
2 There were a number of different analyses and briefing  
3 papers and -- that would come across the desk and I'm  
4 not sure any of them focused solely on state law.

5 Q. Okay. And what else -- what other law did they focus  
6 on if not solely state law?

7 A. They may have focused on state law and federal law.

8 Q. So you don't recall if there was any analysis that  
9 just looked at state law?

10 A. No, sitting here today, I don't recall. There may  
11 have been, but I don't recall.

12 Q. And were you aware prior to the bankruptcy filing that  
13 under state law alone the pension obligations could  
14 not be diminished or impaired?

15 A. This is the discussion we had about five to ten  
16 minutes ago about whether or not state law permitted  
17 it and I will go back to my answer with that. It  
18 seems to suggest a legal conclusion based upon what  
19 the statute 436 provides and the intent of the  
20 legislature.

21 Q. Let me ask you a different question.

22 Is there anything in PA 436 that allows in  
23 your view the Emergency Manager to impact or adversely  
24 affect pension rights in the absence of a Chapter 9  
25 bankruptcy filing?



1 A. Defined contribution.

2 Q. Defined contribution?

3 A. Uh-huh.

4 Q. Now, the existing -- the pension plan that exists  
5 under the steady state projections, is that defined  
6 contribution plan?

7 A. That would be switched over. No, no, defined -- the  
8 steady state scenario?

9 Q. That's a defined benefit?

10 A. That's a defined benefit plan.

11 Q. So what you're projecting here is a switch over to a  
12 defined contribution program and for 2014 we see the  
13 number for the city's contributions is now  
14 25.4 million; is that right?

15 A. Yes, that's -- yes.

16 Q. And that compares with the -- what was the figure?  
17 199.5 million that we saw under the as is?

18 A. Yes, projections.

19 Q. Yes. So the diminution it looks just on the rough  
20 math that the City's pension contributions under the  
21 restructuring are being cut by about 80 percent; is  
22 that right?

23 A. Under 75 million, 80 percent, sure, roughly.

24 Q. And for health, the health benefits, which we saw that  
25 were, what, under the current scenario something like



800.211.DEPO (3376)  
EsquireSolutions.com

1 147 million?

2 A. Retiree health, yes.

3 Q. For retiree health?

4 A. Uh-huh.

5 Q. Under this proposal, the restructuring proposal, I  
6 don't see any line entry for the retiree health  
7 benefits.

8 A. Yes.

9 Q. So they're essentially being cut; correct?

10 A. Well, the obligation is being provided with a  
11 different program, but yes, the City would not have an  
12 obligation going forward of that magnitude.

13 Q. And going back to the pension contributions, you know,  
14 we had talked about a diminution on the order of 80  
15 percent from the 199.5 figure, and I think it's the  
16 City's contention that the 199.5 figure is really  
17 understated, right, because the obligations are really  
18 a lot higher?

19 A. I think we think the liabilities -- this is the steady  
20 state projection on 91. I think we think the  
21 liabilities are higher because what we represented on  
22 the second page of 98 is the estimated undersecured  
23 claims for out years as opposed to a ten-year  
24 projection.

25 Q. Right. And if the liabilities were really greater



800.211.DEPO (3376)  
EsquireSolutions.com



1           than the diminution from the steady state to the  
2           restructuring scenario would be greater than 80  
3           percent; wouldn't it?

4       A.    It might be.  I mean, we've said 80 percent.  I mean,  
5           199.5 less 25, you know, you just roughly cut those in  
6           half, that's a 12 and 1/2 percent, but you know, 88  
7           percent, somewhere in that neighborhood.

8       Q.    Now, the people who are -- the retirees who are  
9           getting impacted from these -- by these cuts in the  
10          proposed restructuring, these are who?  These are men  
11          and women who previously served the City and are now  
12          retired?

13      A.    Yeah, they're two pension plans: one for General  
14          services and the other for Police and Fire.

15      Q.    And these individuals that serve the City in both  
16          public safety and nonpublic safety capacities?

17      A.    Uniform and nonuniform, yes.

18      Q.    And were these -- I guess the issue comes because the  
19          pension liabilities and the healthcare benefits that  
20          may be due are not -- there's not sufficient funding  
21          that was put into them; correct?

22      A.    Well, the healthcare benefit has no funding, the  
23          \$5.7 billion.  And the pension underfunding has our  
24          estimate of the level of underfunding, the unfunded  
25          portion of the pensions, in them.  There are assets



800.211.DEPO (3376)  
EsquireSolutions.com

1 propose to reduce would get a share of the note, yes.

2 Q. And is there any way to tell from this document how  
3 much any individual retiree would ultimately get if  
4 the notes go ahead and are issued?

5 A. Not from this document.

6 Q. There's no way to tell how much cash value any retiree  
7 would receive under this plan that's laid out here  
8 where they get notes?

9 A. It is my understanding that there are a number of  
10 different plans and benefits and factors that go into  
11 that determination for any specific retiree.

12 Q. Okay. Now, Chapter 9 is not referred to in this  
13 restructuring plan; is it?

14 A. I don't think we did.

15 Q. And I think you indicated before that if this was not  
16 agreed to by the various constituencies, then the only  
17 way to implement this restructuring plan would be, if  
18 at all, would be to try to go ahead and do that  
19 through Chapter 9; is that right?

20 A. I think what I said before, I think you're referring  
21 to the May 12th 45-day operating plan, but I think  
22 what I said before on June 10th and June 14th is we  
23 needed to engage in a dialogue, because we didn't want  
24 to go to Chapter 9.

25 MR. ULLMAN: That wasn't my question. Can



800.211.DEPO (3376)  
EsquireSolutions.com

1           you read my question back?

2                               (Record read back as requested.)

3   A.   Yeah, I indicated that here today.

4   Q.   I'll just ask the question again. As you understood  
5       it, if the proposal here were not agreed to or some  
6       other consensual resolution was not reached, was there  
7       any way for you as Emergency Manager to implement this  
8       plan other than to try to get it put in place through  
9       a Chapter 9 filing?

10   A.   Subject to the discussion that we've had a couple of  
11       times earlier today, what I have said is that Chapter  
12       9 is an option to achieve these goals.

13   Q.   And were you at this point aware of any option to  
14       achieve these goals other than Chapter 9 if a  
15       consensual resolution was not reached?

16   A.   There were various briefing memos and discussions, but  
17       given the time frames that we were under, and I said  
18       this at the June 10th meeting and I said it at the  
19       June 14th meeting and I want to be responsive, that if  
20       we didn't, Chapter 9 was an alternative.

21   Q.   And I don't think that's fully responsive at this  
22       point. Had you identified anything else as of June 14  
23       to get this plan implemented, any other course,  
24       putting aside consensual resolution, other than a  
25       chapter 9 file?



800.211.DEPO (3376)  
EsquireSolutions.com

1 A. Nothing that would give us an orderly and  
2 comprehensive resolution of these problems.

3 Q. Now, you gave an interview, that I'm sure you're  
4 familiar with, with the Detroit Free Press on or  
5 around June 14th. Do you remember it? I'll just tell  
6 you what -- I believe you said -- and I'm sure you  
7 remember this one and you can tell me. If not, I have  
8 the quote.

9 A. Yeah, you can give me the quote. There's so many  
10 interviews, but I'll trust your quote.

11 Q. Okay.

12 A. Okay.

13 Q. This is the quotation. Question, you said in this  
14 report, referring to the June 14th proposal, that you  
15 don't believe there is an obligation under our state  
16 constitution to pay pensions if the City can't afford  
17 it? Answer, the reason we said it that way is to  
18 quantify the bankruptcy question. We think federal  
19 supremacy trumps state law.

20 A. Yes.

21 Q. You don't deny making that statement?

22 A. No, I think I've said that several times.

23 Q. And the state law you were referring to that you  
24 referred to as being trumped was Article 9, Section 24  
25 of the state constitution; is that right?



1 A. I believe so.

2 Q. There's no other state law that you view as relevant

3 to the pension issue; is there?

4 A. Subject to the discussions that we had earlier today.

5 Q. As being trumped? There's no other state law that you

6 regarded as being trumped; is there?

7 A. No, there's no other as being trumped.

8 Q. Trumped.

9 A. Right.

10 Q. So the answer to my question -- just so the record is

11 clear, the answer to my question is no other?

12 A. We're not referring to another state law.

13 Q. Okay, thank you.

14 A. Okay.

15 Q. Now, ultimately -- so when the subsequent bankruptcy

16 filing was made -- which it was; right?

17 A. Yes.

18 Q. The intention -- specific intention was indeed to

19 trump Article 9, Section 24 of the state constitution;

20 correct?

21 A. That wasn't the only intention.

22 Q. But that was an intention; was it not?

23 A. That was one of the objectives.

24 Q. Now, ultimately you did request authorization for the

25 governor to file; right?



1 was the singular focus. I think most of our  
2 discussions were about the need for the City to deal  
3 overall with its balance sheet and its obligations,  
4 which would include pensions.

5 MR. ULLMAN: Uh-huh. Okay, can you read my  
6 question back? Listen a little more closely because I  
7 was really -- it was a little more specific of a  
8 question.

9 THE WITNESS: Okay.

10 (Record read back as requested.)

11 A. We probably had that discussion. I don't recall  
12 anything specific, but we probably did.

13 Q. And do you recall any discussion during those same  
14 conversations with the governor or anyone from his  
15 staff as to the impact, if any, of Article 9, chapter  
16 -- Section 24 of the Michigan Constitution as regards  
17 pension benefits?

18 A. I don't recall having discussions in that regard. No.

19 Q. Now, if you look at the governor's response letter,  
20 okay, and the last page, you see at the top there's a  
21 heading called contingencies?

22 A. Yes.

23 Q. And it says 2012 PA 436 provides that my approval of  
24 the recommendation to commence a Chapter 9 proceeding  
25 may place contingencies on such a filing and it gives



1 the citation. It continues, I am choosing not to  
2 impose any such contingencies today. Federal law  
3 already contains the most important contingency, a  
4 requirement that the plan be legally executable,  
5 11 U.S.C. Section 943(b)(4). Do you see that?

6 A. Yes.

7 Q. And did you have any discussions with the governor or  
8 anyone from his staff about that language before you  
9 received this letter back?

10 A. No.

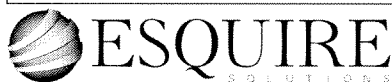
11 Q. Were you -- did you have any understanding before  
12 receiving this that as to whether or not the governor  
13 was going to place any contingencies on the bankruptcy  
14 filing?

15 A. No, but I was concerned about it.

16 Q. And what were you concerned about?

17 A. I was concerned that the governor might place some  
18 contingency in any regards, not just related to the  
19 pensions and others, but that the inner array on  
20 limiting what authority I might have would impact what  
21 discretion I would have under either 436 or Chapter 9.  
22 I was just concerned about contingencies.

23 Q. And was one of the contingencies that you were  
24 concerned about the contingency that could impair your  
25 ability or restrict your ability to cut back the



1 Q. And did you have any plan in place as to what you  
2 would do if the letter came back that imposed a  
3 contingency that in any Chapter 9 filing nothing could  
4 be done that would affect pension rights that were  
5 protected under the Michigan Constitution?

6 A. No.

7 Q. Now, in his letter the governor -- the portion we've  
8 just looked at on the back of page 5, the governor  
9 says, having a legally executable plan under Section  
10 943(b)(4). That's a reference, 943(b)(4), the  
11 bankruptcy code; isn't it?

12 A. I believe so.

13 Q. So he says, he the governor says, having a legally  
14 executable plan under Section 943(b)(4) of the  
15 bankruptcy code is a contingency for Detroit's filing  
16 a bankruptcy petition. Correct?

17 MR. SHUMAKER: Objection, document speaks  
18 for itself.

19 A. That's -- I was going to say the document speaks for  
20 itself. You're sort of reading it, you know, just  
21 inversing it, but it says federal law already contains  
22 the most important contingency requirement that the  
23 plan is legally executable.

24 Q. Right. And this is in the context of him asking or  
25 noting that under PA 436 he could, he the governor,



800.211.DEPO (3376)  
EsquireSolutions.com



1       could place contingencies on a Chapter 9 filing;  
2       right?

3     A.    Yes.

4     Q.    And he goes on to say that federal law also contains  
5       what he calls the most important contingency on the  
6       Chapter 9 filing, that it be legally executable;  
7       correct?

8     A.    Yes, the letter speaks -- that's the language of the  
9       letter.

10    Q.    Did you agree with the governor's analysis here?

11    A.    I -- do I agree?  Yes, I mean, I agree that that's the  
12       most important contingency that we get to, yes.

13    Q.    Now, petition was filed -- the bankruptcy petition was  
14       filed on July 18th, like at 4 in the afternoon, 4:05,  
15       something like that?

16    A.    That's what I was told.  I don't know the specific  
17       time.

18    Q.    Now, in doing -- in making your bankruptcy filing,  
19       were you intending to do something that was in  
20       violation of state law?

21               MR. SHUMAKER:  Objection, calls for legal  
22       conclusion.

23    A.    Here again, subject to all the discussions that we had  
24       earlier today, I was intending to alleviate the City of a  
25       very dire situation and provide it with the maximum



800.211.DEPO (3376)  
EsquireSolutions.com

1 telephone conversations with him and I recall meeting  
2 with him. I don't recall whether it was prior or  
3 after the filing. I know from time to time -- I just  
4 don't recall when it was.

5 Q. Would there have been any reason for you not to  
6 consult the Attorney General prior to the bankruptcy  
7 filing on that issue?

8 A. No, I think the State Attorney General made his  
9 position known prior to the filing.

10 Q. Now, as of this time the petition was filed there were  
11 various state court litigations that had been begun?

12 A. Yes.

13 Q. And those challenged, among other things, PA 436;  
14 correct?

15 A. Yes.

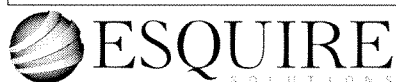
16 Q. And its constitutionality?

17 A. Yes.

18 Q. And in fact, the petition was filed just prior to the  
19 start of a TRO hearing in one of those state  
20 litigations; wasn't it?

21 A. I was told that either that night or the following  
22 day.

23 Q. And are you aware that certain objectors in this  
24 proceeding have stated that the bankruptcy petition  
25 was filed just before the judge in the case was about



1 to issue a TRO prohibiting the bankruptcy filing from  
2 taking place?

3 A. I heard that after the fact, yes.

4 Q. And are you aware that these objectors have stated  
5 that in fact the state lawyers asked for a short delay  
6 before the ruling was issued so they could get the  
7 bankruptcy filing in before the judge came down with a  
8 TRO?

9 A. I don't know if I heard it -- I may have read that  
10 later. I don't know if I heard it.

11 Q. Did you have any involvement in those actions?

12 A. No, no.

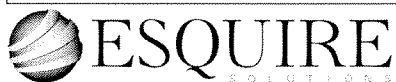
13 Q. Do you deny that that's what occurred?

14 A. I only know what I've heard and I have no personal  
15 knowledge, I just know what I've heard and what I've  
16 read.

17 Q. And isn't it correct that you wanted to get the  
18 bankruptcy petition filed as soon as possible because  
19 you knew there was a risk that the state might rule it  
20 was illegal -- the state court might rule it was  
21 illegal under state law for the bankruptcy proceeding  
22 to be filed?

23 A. No, that wasn't the reason.

24 Q. Is there a particular reason that the bankruptcy  
25 filing was made at 4:06 in the afternoon of the same



1 day a TRO was being heard in the state court other  
2 than to get the jump on the state court ruling?

3 MR. SHUMAKER: Object to the form.

4 A. Not to the best of my knowledge.

5 Q. Now, you're aware that the state court in that  
6 litigation in fact later issued a ruling that PA 436  
7 is unconstitutional to the extent that it authorizes a  
8 proceeding under Chapter 9 in the way that could  
9 threaten to impair or diminish accrued pension  
10 benefits?

11 A. Yes, I was informed that there are I believe three  
12 TROs after the bankruptcy filing.

13 Q. And you have proceeded with the bankruptcy petition  
14 notwithstanding; correct?

15 A. Well, the bankruptcy petition had been filed. There  
16 were open questions about the application of the stay.  
17 There was also a question about an appeal, which was  
18 taken up I believe by the Attorney General's office.  
19 So when you say you proceeded with the petition, we  
20 filed the petition, there was a ruling, and there were  
21 appeals.

22 Q. Okay. And in light of the state court ruling that  
23 PA 436 was unconstitutional, you did not take any  
24 steps to withdraw the bankruptcy petition from filing;  
25 did you?



1 A. No.

2 Q. And you have not taken any steps to stop the  
3 bankruptcy proceeding from going forward; have you?

4 A. No.

5 MR. ULLMAN: Would this be a good time to  
6 stop for lunch, a quick lunch?

7 MR. SHUMAKER: Sure.

8 MR. ULLMAN: I'm ready to continue but I  
9 know --

10 THE WITNESS: You got another -- how much  
11 -- do you have another line of inquiry? Whatever  
12 everybody --

13 MR. ULLMAN: I'm about to switch subject  
14 matters.

15 THE VIDEOGRAPHER: Going off the record at  
16 12:52 p.m.

17 (Luncheon recess between  
18 12:52 p.m. and 1:30 p.m.)

19 THE VIDEOGRAPHER: We're back on the record  
20 at 1:35 p.m.

21 BY MR. ULLMAN:

22 Q. Welcome back, Mr. Orr.

23 A. Good afternoon.

24 Q. One other question about the June 14th proposal.  
25 Referring to page 98, we talked about the defined



800.211.DEPO (3376)  
EsquireSolutions.com

1 contribution benefit plan?

2 A. Yes.

3 Q. Okay. Is it correct that under that plan  
4 contributions are being made only for people who would  
5 be current City employees?

6 A. Will the plan be closed?

7 Q. Yes.

8 A. Yes, I believe so.

9 Q. So under the restructuring plan there would be no  
10 pension contributions made for retirees; correct?

11 A. I believe that's correct.

12 Q. Now, you I believe said that the June 14th proposal  
13 was presented at a meeting to representatives of  
14 various creditors, I think you said that in your  
15 declaration?

16 A. On June 14th, yes.

17 Q. Okay. Did you speak at that meeting?

18 A. Yes.

19 Q. And who else spoke?

20 A. I believe all -- several members of our team, I  
21 believe it was Mr. Heiman, David Heiman, I believe it  
22 was Ken Buckfire, I believe Heather Lennox was on, I  
23 believe Bruce Bennett was there, I believe Ken  
24 Buckfire may have spoken. I'm trying to recall if  
25 there was anyone else.



1 association that the City would in fact be willing to  
2 agree to a restructuring that did not involve the  
3 elimination of ongoing pension contributions for  
4 retirees.

5 A. No, I didn't say that.

6 Q. And do you know in fact whether anyone working on your  
7 team ever said that to any union or retiree  
8 association?

9 A. No.

10 Q. Okay. During the time from June 14th to July 17, did  
11 you or anyone else from your team tell any union or  
12 retiree association that the City acknowledged that  
13 under Michigan law pension rights were explicitly  
14 protected from being impaired or diminished?

15 A. I don't --

16 MR. SHUMAKER: Objection, form, calls for  
17 speculation.

18 A. I don't recall anyone saying that, but it may have  
19 happened.

20 Q. But you personally didn't make that statement; did  
21 you?

22 A. I don't recall saying that. I may -- you know,  
23 anything is possible, I just don't recall saying it.

24 Q. And as of July 17, had the City, you or anyone working  
25 for you, told any union or retiree association that it



1 would in fact be willing to agree to a restructuring  
2 plan that did not effectively eliminate the prior  
3 existing health benefits for retirees?

4 MR. SHUMAKER: Objection, foundation, calls  
5 for legal speculation.

6 A. Healthcare benefit for retirees?

7 Q. Yeah.

8 A. That did not eliminate it?

9 Q. Yeah, that you --

10 A. Did not adjust it in some fashion?

11 Q. Did not essentially cut it out the way it was being  
12 cut out in the June 14th proposal.

13 A. Yeah, I want to be careful with the frame cut out,  
14 because I think there were subsequent discussions  
15 about what would be provided instead --

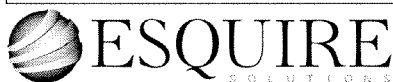
16 Q. Uh-huh.

17 A. -- as a proposal, so I don't want my testimony to seem  
18 as if we were not proposing an alternative to the  
19 existing healthcare plan and that had not been  
20 discussed prior to July 17th, but subject to those  
21 qualifications the answer to your question is yes.

22 Q. Now, I've been asking you as of July 17 and then the  
23 bankruptcy filing was the very next day; correct?

24 A. Yes.

25 Q. Now, in your declaration do you recall making





1 Q. And on the pension side of things has there been any  
2 change from what was set out in the June 14th  
3 proposal? As I understand this, it's still a defined  
4 contribution plan for current employees and no  
5 contributions being made by the City for retired --  
6 for retirees; is that right?

7 MR. SHUMAKER: Object to the form.

8 A. Yeah, the general consensus is that you would close  
9 the plan and there would be contributions for  
10 currents, yes.

11 Q. And so again, just to be clear, that means for  
12 retirees no ongoing contributions provided by the  
13 City?

14 A. None other than their participation in the note that's  
15 proposed in the June 14th proposal.

16 Q. And with no new funding for their pensions the  
17 payments will stop -- to the retirees would stop being  
18 made when the retirement funds run out; is that right?

19 A. That's a loaded question. I mean, the -- and the  
20 reason I say it's a loaded question, some of the  
21 retirement funds have said their payments won't run  
22 out so that's why we want to have a dialogue. We  
23 think they're at risk. They've told us they're not.

24 Q. And by the City's estimation the pension funding will  
25 run out when? If no new funds are put in?



1           unreasonable assumptions either way. But your general  
2           question as to whether or not if the information going  
3           in was inaccurate, revealed an inaccurate result, I  
4           think it's true as a matter of just common sense and  
5           logic.

6   Q.   And the same thing as to assumptions. If the  
7           assumption made was wrong, then the output would be  
8           wrong also?

9   A.   I think that's why we asked several times to have a  
10          discussion about the assumptions that are necessary  
11          for pension benefits.

12   Q.   Now, the cash flows that are being reported in your  
13          declaration, those do not include any assumptions as  
14          to the monetization of various assets that the City  
15          continues to hold; is that right?

16                 MR. SHUMAKER: This is paragraph 56 that  
17                 you're referring to, counsel?

18                 MR. ULLMAN: Yeah, I'm looking in general.

19                 MR. SHUMAKER: In cash flow?

20                 MR. ULLMAN: Yeah, cash flow.

21   A.   You're talking about generally do the cash flows  
22          include any monetization of any City assets?

23   Q.   Yeah.

24   A.   No, they do not.

25   Q.   And obviously if assets currently held by the City



1 for some period of time; true?

2 MR. SHUMAKER: Objection to form.

3 A. Here again, depending upon the size of the asset, but  
4 anything is possible.

5 Q. Okay. Now, the City of Detroit owns certain pieces of  
6 art that are stored at the Detroit Institute of Art;  
7 is that right?

8 A. Yes.

9 Q. And how many is that?

10 A. I think the City owns approximately 66,000 pieces of  
11 art.

12 Q. Now, those --

13 A. No, strike that. Let me be clear so we can move on.

14 Q. Yeah.

15 A. I think there are 66,000 pieces of art over at Detroit  
16 Institute of Art. I'm not sure the City owns all  
17 66,000 pieces. I've been informed that it owns 35,000  
18 of those pieces in an undisputed capacity.

19 Q. Okay, that's what I was getting at. And that's  
20 distinct from art that is subject to a public -- or is  
21 or may be subject to a public trust or something like  
22 that. This is 35,000 pieces that the City owns, as  
23 you said, in an undisputed capacity?

24 A. Outright, yes.

25 Q. Outright. Now, is it correct that the City has



800.211.DEPO (3376)  
EsquireSolutions.com

1 reports.

2 Q. Do you have any reason to believe that the value of  
3 the City-owned art is less than something on that  
4 order of magnitude?

5 A. I'm relatively agnostic on the value of the art at  
6 this point. I'm waiting to see the appraisal.

7 Q. Do you have any understanding as you sit here today as  
8 to what the value of the City-owned art is?

9 A. No.

10 Q. Are you considering selling the City-owned art to  
11 generate cash?

12 A. What I've said consistently is all options on the  
13 table, but we first have to decide what we're talking  
14 about.

15 Q. Do you have any understanding as to how long it would  
16 take to sell the art if a decision were made to sell  
17 it?

18 A. No.

19 Q. Have you considered other ways to monetize the art  
20 besides an outright sale?

21 A. All options are on the table.

22 Q. Well, have you considered any others in particular?

23 A. We have not made -- meaning my team and I have not  
24 made any decisions with regard to the art contained at  
25 DIA.



800.211.DEPO (3376)  
EsquireSolutions.com

1 Q. I'm not asking about decisions, I'm just asking what  
2 you considered.

3 A. We considered a lot of things, yes.

4 Q. And have you -- well, then can you answer my question  
5 more specifically? What if any ways to monetize the  
6 art have you considered other than an outright sale?

7 A. I think there's been discussions about some form of --  
8 and I'm not clear because to be direct, I know that  
9 some of my -- I've never been to DIA, I don't think  
10 I've ever spoken with their board, I know that some of  
11 my consultants have been over there and have had  
12 various discussions about the art. I think the  
13 discussions were very high level and very general.  
14 That's what I know.

15 Q. Okay, that's really very nonspecific. Are you aware  
16 of any specific consideration given to any form of  
17 monetizing the art other than an outright sale?

18 A. No, nothing specific.

19 Q. Could be a lease -- sorry, but nothing has been  
20 identified as a possible route to monetize?

21 A. Nothing specific. There have been discussions, but  
22 nothing specific.

23 Q. Have there been discussions of leasing as a possible  
24 way to monetize?

25 A. Possibly, yes.



1 Q. Okay. And do you have any understanding of the amount  
2 of cash flow that could be generated on an annual  
3 basis if the art were leased?

4 A. Sitting here today, no.

5 Q. Has that number been talked about? Is there a  
6 document that might discuss that?

7 A. No, no, there's no document. I -- I -- in an effort  
8 to be accurate, I think I had a discussion with one of  
9 the representatives at Christie's that was generally  
10 speaking leasing is a very difficult thing to do.  
11 That's the nature of the discussion, that you would  
12 have to have the right pieces at the right time at the  
13 right market to generate cash.

14 Q. So there was no discussion about the amount of money  
15 it could generate?

16 A. No, no, it -- there was some discussion about  
17 \$1 million, for instance, or something like that, but  
18 it's nothing substantive.

19 Q. Okay. Now, the City also has a department of water  
20 and sewers; is that right?

21 A. Yes.

22 Q. And as I understand it, the department of water and  
23 sewers operates as a separate entity for accounting  
24 and operating purposes?

25 A. As a result of Judge Cox's opinion, it has separate



1 A. When you talk about asset values, you're talking about  
2 switches, pipes, valves, things along that nature. I  
3 don't think I've ever seen an appraisal of the value  
4 of the assets of the water and sewer department.

5 Q. Do you have a general understanding of what the value  
6 of the assets --

7 A. No.

8 Q. -- is worth?

9 A. No.

10 Q. Have you taken any steps to monetize the value of the  
11 assets owned by the water and sewer department?

12 A. When you say monetize, I'm going to respond to the  
13 question on the basis that monetize is in the broad  
14 sense --

15 Q. Uh-huh.

16 A. -- not whether it's a lease, whether it's a sale,  
17 getting authority.

18 Q. Just get money for it.

19 A. Get money for it, get some dough, okay, just want to  
20 be clear. Discussions are ongoing in that regard.

21 Q. What are those discussions in a nutshell?

22 A. Those are commercially sensitive so I don't want to  
23 interfere. Suffice it to say, the -- Judge Cox's  
24 opinion spoke to the possibility of creating an  
25 authority that would remove the water and sewer



800.211.DEPO (3376)  
EsquireSolutions.com

1           when you talk about values, there's a range of values  
2           from asset disposition and outright sale and  
3           privatization to creating an operation or an authority  
4           where someone has brought in, as has been done in  
5           Washington, D.C., to actually operate the garages and  
6           meters. So we're looking at a range of alternatives  
7           to determine what those values could be.

8       Q.    What's the range of values you're looking at so far?

9       A.    We don't have that yet.

10      Q.    How concrete have you -- let me withdraw that.

11                               What specific steps have been taken so far?

12      A.    Our investment advisors and consultants are beginning  
13           discussions with various parties that undertake these  
14           types of operations within a range of alternatives to  
15           try to assess values.

16      Q.    And the investment advisors, would that be Buckfire?

17      A.    Yeah, it would be our investment banker, Ken Buckfire,  
18           Miller Buckfire.

19      Q.    Okay. In the June 14th proposal you also make  
20           reference to about 22 square miles of land that the  
21           City owns?

22      A.    City-owned land, yes.

23      Q.    Do you have an understanding as to the value of that  
24           land?

25      A.    I've been informed that some of the value is at best



800.211.DEPO (3376)  
EsquireSolutions.com



1           nominal, but no, sitting here today, I do not have a  
2           number as to the value of the land.

3       Q.   Have any steps been taken to try to monetize that  
4           value, to get dough as you put it?

5       A.   Yeah. Well, here again, you're -- to get income  
6           realization perhaps I should say more articulately,  
7           but here again, we're at the preliminary steps of  
8           examining potential alternatives regarding land.

9       Q.   So you don't know yet?

10      A.   No.

11      Q.   The Belle Isle Park, that's also referenced in the  
12           June 14th proposal?

13      A.   Yes.

14      Q.   It's indicated that there's a prospective lease to the  
15           state?

16      A.   Yes.

17      Q.   Okay. And do you expect that to go through?

18      A.   I'm going to ask for it. It was proposed and was not  
19           accepted in time so the state withdrew it, but I do  
20           believe we're going to intend to ask that that lease  
21           be renewed.

22      Q.   And what's the annual rent the City would get under  
23           that lease?

24      A.   The City has a \$6 million maintenance obligation and  
25           that would be taken up by the state so that wouldn't



800.211.DEPO (3376)  
EsquireSolutions.com

1 A. I can't -- it was an attorney-client communication.

2 Q. And are you aware of any cases where, to use your  
3 phraseology, as a result of a Chapter 9 filing by a  
4 municipality the state constitution was trumped?

5 A. Chapter 9 filing?

6 Q. Yes.

7 A. I'm not sure, because the case I'm aware of, I don't  
8 know if it was a state constitution. I don't recall.

9 MR. ULLMAN: Okay, I have no more questions  
10 at this time. But I may reserve the right, we have  
11 some other people that are going to ask questions, at  
12 the end of that to ask some follow-ups, if that's  
13 possible.

14 THE WITNESS: Okay.

15 MR. SHUMAKER: You want to take a quick  
16 break?

17 MR. ULLMAN: Yeah, why don't we take a  
18 break. Someone else has to sit here.

19 THE VIDEOGRAPHER: Going off the record at  
20 2:53 p.m.

21 (A brief recess was taken.)

22 THE VIDEOGRAPHER: We're back on record at  
23 3:07 p.m.

24 EXAMINATION

25 BY MS. LEVINE:



800.211.DEPO (3376)  
EsquireSolutions.com

1 Q. At the time the City filed for bankruptcy, was it your  
2 view that there had to be significant cuts in accrued  
3 vested pension amounts for both active and currently  
4 retired persons?

5 A. Yes.

6 Q. And is it still -- still your view today?

7 A. Yes, based upon our analysis, yes.

8 Q. This conclusion that there must be significant cuts in  
9 accrued vested pension amounts for both active and  
10 currently retired persons, was that assertion or that  
11 idea or that notion discussed by you with the governor  
12 at any time before June 14th, 2013?

13 A. Outside of meetings with attorneys?

14 MR. SHUMAKER: Outside of meetings or calls  
15 with attorneys present.

16 Q. Yeah, I'm not looking to infringe your attorney-client  
17 privilege.

18 A. I know. I just don't recall all of the meetings. It  
19 may have been discussed outside those meetings.

20 Q. Well, do you have a recollection?

21 A. I do not have a recollection of specific discussions.

22 Q. Just so I understand your testimony, are you saying it  
23 was -- it may have been discussed but you're not sure  
24 whether or not it was discussed in meetings that were  
25 outside the attorney-client privilege? Is that your



1 June 14th meeting.

2 A. Okay.

3 Q. Do you have a recollection of any words you used to  
4 communicate to those in attendance that you were open  
5 to consider anything, if that's a fair  
6 characterization of your prior testimony? Did you use  
7 words to that effect and if so what were those words?

8 A. I don't remember the exact words, but I think we  
9 expressed the sentiment that this is a proposal and  
10 we're open to discussions.

11 Q. Well, that's a little different. I mean, to be open  
12 to discussion. I'm not asking you -- I think you  
13 testified a few minutes ago that you were open to  
14 anything and if I'm mischaracterizing that, correct  
15 me.

16 A. Well, no, anything -- and I meant anything meaning  
17 anything in terms of discussions, that's why we styled  
18 this, we never called this a plan, we never called  
19 this a deal, we always called it a proposal because we  
20 were open for discussions, any response, meaning  
21 anything, so I think they're the same thing. I'm not  
22 trying to be cute in any fashion, I'm just saying we  
23 were open to responses, yes.

24 Q. Did you ever say to the attendees at the meetings or  
25 communicate to the attendees in writing that the City



1 movement on it.

2 Q. So as things now stand, there's no plan to put forward  
3 anything else if the creditors and in particular the  
4 retirees do not agree to what's set out in the June  
5 14th proposal?

6 A. As it stands right now, we don't have a plan.

7 MR. ULLMAN: I have nothing further. Thank  
8 you, Mr. Orr.

9 MR. SHUMAKER: Thank you, counsel.

10 THE WITNESS: Thank you.

11 THE VIDEOGRAPHER: Going off the record at  
12 5:41 p.m.

13 (Discussion held off the record.)

14 THE VIDEOGRAPHER: We're back on the record  
15 at 5:43 p.m.

16 EXAMINATION

17 BY MS. GREEN:

18 Q. Hi, Mr. Orr. We've met before.

19 A. Yes.

20 Q. My name is Jennifer Green, I represent the two  
21 Retirement Systems for the City of Detroit.

22 A. Yes, Jennifer -- Ms. Green. Good to see you again.

23 Q. Thank you. Nice to you see you again too.

24 I have a question about Exhibit 11. I  
25 don't know if you have it in front of you or not.



800.211.DEPO (3376)  
EsquireSolutions.com

1 State of Michigan)

2 County of Genesee)

3 Certificate of Notary Public

4 I certify that this transcript is a complete, true and  
5 correct record of the testimony of the witness held in this  
6 case.

7 I also certify that prior to taking this deposition,  
8 the witness was duly sworn or affirmed to tell the truth.

9 I further certify that I am not a relative or an  
10 employee of or an attorney for a party; and that I am not  
11 financially interested, directly or indirectly, in the  
12 matter.

13 WITNESS my hand this 19th day of September,  
14 2013.

15  
16  
17 

18 Jeanette M. Fallon, CRR/RMR/CLR/CSR-3267

19 Certified Realtime Reporter

20 Registered Merit Reporter

21 Certified LiveNote Reporter

22 Certified Shorthand Reporter

23 Notary Public, Genesee, Michigan

24 Acting in Oakland County, Michigan

25 My Commission Expires: 9-19-18



800.211.DEPO (3376)  
EsquireSolutions.com

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF MICHIGAN

3 SOUTHERN DIVISION

4 -----X

5 IN RE ) Chapter 9

6 CITY OF DETROIT, MICHIGAN, ) Case No. 13-53846

7 Debtor. ) Hon. Steven W. Rhodes

8 -----X

11 CONTINUED VIDEOTAPED DEPOSITION of

12 KEYVN D. ORR

13 Volume II

14 Washington, D.C.

15 Friday, October 4, 2013

18 Pages: 308 - 496

19 Reported by: Cindy L. Sebo, RMR, CSR, RPR, CRR,

20 CCR, CLR, RSA

21 Assignment Number: 14008

22 File Number: 105824



800.211.DEPO (3376)  
EsquireSolutions.com

1 demonstrated any concern about political  
2 ramifications as they're being used today.

3 Q. Did you understand that reductions in  
4 vested pension benefits would be a necessary part  
5 of any restructuring for Detroit?

6 A. I think that was certainly  
7 anticipated, yes.

8 Q. Is it your understanding that the  
9 Governor understood that the reduction in vested  
10 pension benefits would be part of any  
11 restructuring for Detroit?

12 MR. SHUMAKER: Objection: foundation.

13 MS. LEVINE: I'm asking him his  
14 understanding.

15 THE WITNESS: I'm not sure what the  
16 Governor understood. You'd have to ask him.

17 BY MS. LEVINE:

18 Q. Did the Governor ever communicate to  
19 you that he expected that vested pension benefits  
20 would be part of any restructuring for Detroit?

21 A. The Governor communicated to me that  
22 he expected -- no.



800.211.DEPO (3376)  
EsquireSolutions.com



1 Q. Yeah.

2 A. -- for the City who had been  
3 retained, the City representatives were there and  
4 the State representatives were there.

5 Q. Okay. I'll talk -- call that the --  
6 the review team --

7 A. Review team --

8 Q. -- is that the term you like?

9 Okay --

10 A. -- yeah.

11 Q. -- so as I understand what you're  
12 saying, the -- the -- the slides themselves were  
13 present -- given over to the review team as a --  
14 a -- a bound --

15 A. Yes.

16 Q. -- volume or attached in some way?

17 A. Yes, the -- the -- the slide deck as  
18 the pitch book was given to the review team.

19 Q. Okay. And then, at the presentation,  
20 were -- how did that work? Did you -- did people  
21 sort of go through the slides orally and then --  
22 and -- and make comments as they were going



800.211.DEPO (3376)  
EsquireSolutions.com

1 through the different pages in the pitch book?

2 A. No. As I recall, we handed out the  
3 pitch book and began sort of going through the  
4 slide, but within the first page or two, the  
5 discussion exceeded the slides. And we really  
6 ended up not going through the pitch book in any  
7 meaningful manner --

8 Q. Okay.

9 A. -- at the presentation.

10 Q. Okay. And this -- at the time of the  
11 presentation, you were indeed still part of  
12 Jones Day --

13 A. Yes.

14 Q. -- and part of the pitch team?

15 A. Yes, absolutely.

16 Q. Okay.

17 Okay. I'm going to mark another  
18 document, Mr. Orr, and ask if you've ever seen  
19 this, which is Number 22.

20 A. Two.

21 MR. ULLMAN: Here's a copy for you,  
22 two copies for you, and an extra, and an extra. I



1 don't want to bring these back with me is all.

2 - - -

3 (Whereupon, City of Detroit -  
4 Restructuring Plan, Mayor's  
5 Implementation Progress Report was  
6 marked, for identification purposes,  
7 as Orr Deposition Exhibit  
8 Number 22.)

9 - - -

10 THE WITNESS: Thank you.

11 BY MR. ULLMAN:

12 Q. Okay. What we've marked as  
13 Exhibit 22, Mr. Orr, is entitled, City of Detroit  
14 - Restructuring Plan, Mayor's Implementation  
15 Progress Report, with the date of March 2013.

16 Have you ever seen this document  
17 before?

18 A. I think I've seen it before, but I  
19 think that was after I became emergency manager.

20 Q. Okay. That's fine.

21 And what I'd like to do is try to  
22 just ask you about one page of this.



800.211.DEPO (3376)  
EsquireSolutions.com

1 A. Um-hum.

2 Q. If you could look at Page 6.

3 A. Um-hum.

4 Q. Okay. What we --

5 MR. SHUMAKER: Of the -- of the  
6 actual document?

7 MR. ULLMAN: Of the -- yes. I'm  
8 sorry, yeah.

9 And just for clarity, this document  
10 bears Bates Number DTMI00129416, and Page 6 of the  
11 document bears the Bates number ending in 422.

12 THE WITNESS: Um-hum.

13 BY MR. ULLMAN:

14 Q. Okay. And this page, in general, is  
15 entitled, The Mayor's plan includes strategies to  
16 implement changes that will significantly reduce  
17 general fund long-term liabilities.

18 I'd like you to focus on Number -- or  
19 Letter (b) --

20 A. Yes.

21 Q. -- you see 3(b)?

22 A. Um-hum.



800.211.DEPO (3376)  
EsquireSolutions.com

1 Q. It says, Pension unfunded  
2 liabilities, and the first bullet point says,  
3 Approximately 650 million of unfunded liability as  
4 of fiscal year 2012, of which only 250 million  
5 relates to general fund.

6 A. Yes, I see that.

7 Q. And do you have an understanding as  
8 to what's being said there and what that reference  
9 is?

10 MR. SHUMAKER: Objection: foundation.

11 THE WITNESS: Yeah. I was obviously  
12 not responsible for drafting, developing or the  
13 due diligence behind the document. The document  
14 speaks for itself.

15 But what I think is being said there  
16 is that the unfunded liability for the -- and I  
17 assume it's speaking to both pension funds; it may  
18 be one or the other --

19 BY MR. ULLMAN:

20 Q. Um-hum.

21 A. -- but the unfunded liability for  
22 fiscal year 2012 is 250, and 250 million of that



800.211.DEPO (3376)  
EsquireSolutions.com

1 is somehow an obligation of the general fund.

2 Q. Okay. Did you say 250? It's -- you  
3 meant to say 650, right?

4 A. No, no. It's 650 total --

5 Q. Right.

6 A. -- but 250 million of that is an  
7 obligation of the general fund.

8 Q. You had misspoken and said 250 both  
9 times --

10 A. Oh, I'm sorry --

11 Q. -- so --

12 A. -- oh, no -- okay. 650 and 250, I'm  
13 sorry. I was --

14 Q. Okay.

15 A. -- thinking ahead, thinking quicker  
16 than my mouth moved.

17 Q. Okay. And as I -- I understand that  
18 the 650 million that's referred here -- to here by  
19 the Mayor corresponds pretty closely, if I recall,  
20 to the \$644 million figure that was referred to in  
21 the June 14th proposal; is that right?

22 A. I would -- I -- yes, I -- I would



800.211.DEPO (3376)  
EsquireSolutions.com

1 think it does --

2 Q. Okay.

3 A. -- I'm -- I'm -- here again, I'm  
4 not -- I'm assuming it -- it speaks for itself and  
5 it's facially correct; but, yes, I would think  
6 that's the reference.

7 Q. Okay. And so can you tell me what --  
8 what is your understanding when the Mayor says  
9 here that 250 million relates to the general fund,  
10 what the other 300 --

11 A. 400.

12 Q. -- 400 million relates to? And  
13 what's -- what is the distinction being drawn  
14 between what relates to the general fund versus  
15 what relates to something other than the general  
16 fund?

17 A. I'm not sure.

18 Q. Well, is it correct that -- that some  
19 portion -- let's just stick with the -- we can use  
20 the \$644 million number --

21 A. Um-hum.

22 Q. -- because I think that's what you



800.211.DEPO (3376)  
EsquireSolutions.com

1 would probably say is more accurate.

2 That's the number that's cited in the  
3 June 14th proposal, right?

4 A. Yeah, they may have -- they may have  
5 rounded up here --

6 Q. Okay.

7 A. -- but we'll -- it's -- it's  
8 approximately that amount.

9 Q. Okay. Is it correct that for the  
10 approximately 644 million unfunded pension  
11 liability that you refer to in the June 14th  
12 proposal, that some portion of that is allocable  
13 to a payment source other than the general fund?

14 A. I think that's correct.

15 Q. Okay. And what are those --  
16 what is -- what are the other payment sources to  
17 which the total 650 -- or I'm sorry -- 644 million  
18 is allocable other than the general fund?

19 A. Well, there are other sources, but it  
20 could be principally related to the Water  
21 department.

22 Q. Okay. And what is your understanding



800.211.DEPO (3376)  
EsquireSolutions.com



1 as to how much of the approximately 644 million  
2 unfunded pension liability relates to liability  
3 for personnel from the Department of Water and  
4 Sewer?

5 A. Approximately that difference.

6 Q. Okay. So it's about 450 million?

7 A. Approximately, yeah.

8 Q. Okay. And I'm trying to recall from  
9 your last testimony.

10 For the -- the pension monies that  
11 are due relative to personnel from the Department  
12 of Water and Sewer, are the pension payments made  
13 directly by the Department of Water Sewer to the  
14 retirement systems, or is the money paid first by  
15 the retirement -- I'm sorry -- by the Water and  
16 Sewer Department to the City, which then transmits  
17 it to the retirement system, or is there another  
18 mechanism for the payment?

19 MR. SHUMAKER: Objection to form.

20 THE WITNESS: I believe it's the -- I  
21 believe it's the latter.

22



800.211.DEPO (3376)  
EsquireSolutions.com

1           A.       I could go back and check it to be  
2       sure, but I think that's the approximate mechanism  
3       as I understand it.

4           Q.       Okay. Now, by my math -- I make no  
5       representations as to my math, but just looking at  
6       the numbers, it looked -- actually, do I have a  
7       calculator here? I don't think I do.

8                    What percentage is 250 over 650? I  
9       actually didn't do the math.

10          A.       Four -- it's 40-some odd.

11          Q.       It's 40-some -- yeah, we can get it  
12       precisely.

13                   Zero? Oh.

14                   250 divided by 6 -- let's say 650 --  
15       shoot, I didn't do that right. I apologize. Let  
16       me try to clear this and do it again.

17                   250 divided -- 6. This isn't right.

18                   Okay. It looks like about  
19       38 percent.

20          A.       Right.

21          Q.       Okay. You recall that -- that during  
22       the last deposition, you indicated that you



800.211.DEPO (3376)  
EsquireSolutions.com

1 thought that the actual unfunded liability was --  
2 was higher than the 644 number and could be as  
3 much as 3.5 billion or something like that?

4 A. Yes.

5 Q. Okay. My question is, does the --  
6 does the -- is the proportion of unfunded  
7 liability allocable to the general fund versus the  
8 Department of Water Sewer personnel constant if  
9 you -- if you use a higher liability figure?

10 In other words --

11 A. If we went up to 3.5 --

12 Q. Yeah, yeah --

13 A. -- million, would it be --

14 Q. -- would the Department of Water and  
15 Sewer still be approximately 38 percent of the  
16 total unfunded liability?

17 A. I'm -- I'm not sure. I would think  
18 that a rough estimate might be. But as I said, I  
19 think, in September 16th, part of those  
20 calculations had to do with a number of factors,  
21 so I don't want to say that my testimony is as  
22 exactly proportioned.



800.211.DEPO (3376)  
EsquireSolutions.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

- - -

THE VIDEOGRAPHER: Going back on the  
record at 1306. This marks the beginning of  
Tape Number 2.

MR. DECHAIRA: Okay.

BY MR. DECHAIRA:

Q. Mr. Orr, before we broke, I was  
asking you about a meeting you had with the  
Michigan Attorney General.

And my question was, what was said at  
that meeting?

A. Yes.

With Attorney General Schuette, I  
don't recall the exact date; but, generally  
speaking, the Attorney General -- at the meeting,  
as I said, was Mr. Heiman on the phone, the  
Attorney General and an attorney from his office,  
Matt, whose last name escapes me right now. And  
generally what was said, the Attorney General  
wanted to express why he felt duty-bound to take a  
position that the Michigan State Constitution  
protected vested pension obligations.



800.211.DEPO (3376)  
EsquireSolutions.com

1 approximately 61.5 percent?

2 A. But, remember, I said that you have  
3 to be careful with trying to draw a straight-line  
4 comparison between the two numbers you may  
5 calculate in. But generally speaking, if we're  
6 just talking about the math, that -- that --

7 Q. Right --

8 A. -- would be the estimate.

9 Q. -- I'm right here just talking about  
10 the ratio on the -- the number that's referred to  
11 as the 650 -- the approximately 650 by the Mayor.

12 A. Yes.

13 Q. And then I think the next question I  
14 asked you, which I think is what you were alluding  
15 to, that if you assumed a larger liability figure,  
16 would that ratio continue to hold; and my  
17 recollection is, your answer was roughly it would,  
18 but you may have to, you know, fine-tune the math.

19 A. It -- it -- it might roughly hold,  
20 but you need to be careful to not draw the  
21 conclusion that is -- it's exactly comparable.

22 Q. Okay. I understand.



800.211.DEPO (3376)  
EsquireSolutions.com

1 A. Okay.

2 Q. Okay.

3 And then the other question I have  
4 for you -- this is referring to the unfunded  
5 pension liability --

6 A. Um-hum.

7 Q. -- you're also familiar with the  
8 medical benefits for retirees --

9 A. Yes.

10 Q. -- the health -- and I think that's  
11 sometimes referred to as OPEB?

12 A. Yes, other [sic] employee benefits.

13 Q. Okay. And for the OPEB is -- are --  
14 is the -- is the situation similar that some  
15 amount of the total OPEB liability that the City  
16 faces is allocable to sources other than the  
17 general fund?

18 A. You -- you know, I think it is; but  
19 I'm not recalling that mechanism as well as I  
20 recall the pension mechanism, but I think it is.

21 Q. Okay. And would then some portion of  
22 the total OPEB unfunded liability be allocable



800.211.DEPO (3376)  
EsquireSolutions.com

1 also to the Department of Water and Sewer to their  
2 retirees?

3 A. It might well be, but I'd need to  
4 confirm that.

5 Q. Okay. And have you done any analysis  
6 of that question?

7 A. Yes --

8 Q. Okay.

9 A. -- well, our contractors have done an  
10 analysis of the question.

11 Q. Okay. And who specifically has done  
12 an analysis of that?

13 A. Oh, I think our team at -- the entire  
14 team: Conway MacKenzie, Ernst & Young,  
15 Miller Buckfire.

16 Q. And do you recall their general  
17 conclusions to what percentage of the total  
18 unfunded OPEB liability is allocable to the -- A,  
19 to the Department of Water of Sewer; or, B, some  
20 other fund or entity apart from the general fund?

21 A. I'm -- I'm not -- I don't recall if  
22 it is, and I don't recall the percentage.



800.211.DEPO (3376)  
EsquireSolutions.com

C E R T I F I C A T E

DISTRICT OF COLUMBIA:

I, Cindy L. Sebo, a Notary Public within  
and for the Jurisdiction aforesaid, do hereby  
certify that the foregoing deposition was taken  
before me, pursuant to notice, at the time and place  
indicated; that said deponent was by me duly sworn  
to tell the truth, the whole truth, and nothing but  
the truth; that the testimony of said deponent was  
correctly recorded in machine shorthand by me and  
thereafter transcribed under my supervision with  
computer-aided transcription; that the deposition is  
a true record of the testimony given by the witness;  
and that I am neither of counsel nor kin to any  
party in said action, nor interested in the outcome  
thereof.



Cindy L. Sebo  
District of Columbia, Notary Public  
My Commission Expires  
April 14, 2015

Cindy L. Sebo, RMR, CRR, RPR, CSR,  
CCR, CLR, RSA, Notary Public



800.211.DEPO (3376)  
EsquireSolutions.com



From: CN=Kevyn Orr/O=JonesDay  
Sent: 1/31/2013 3:45:47 PM  
To: CN=Corinne Ball/O=JonesDay@JonesDay  
CC: "Stephen Brogan" <sjbrogan@jonesday.com>  
Subject: Re: D

CB,

Thank you for thinking about alternative ways to skin this cat. But I don't think we should look at this right now for at least two reasons. First, the state already has EMs appointed or five cities and four school districts. I wouldn't want it to seem like I have a special deal. Second, in thinking about the EM position I went back and looked at the SIGTARP legislation and the federal law authorizing the creation of the D.C. Control Board in 95. Both gave those managers tremendous powers, but neither was subject to questions about the authority of the Congress to enact them and the President's authority to sign them into law. By contrast Michigan's new EM law is a clear end-around the prior initiative that was rejected by the voters in November. The new EM law gives local governments four choices to fix their financial emergency:

Consent Agreement, in which local leaders remain in charge but must meet certain conditions in an agreement negotiated with the state (Detroit is already under a CA and it sounds like it's not working);  
A state appointed EM that has broad authority over local finances;  
Chapter 9 bankruptcy with the Governor's approval; and  
Mediation, in which the local government and interested parties meet with a neutral party to resolve financial issues, such as employee contracts (this is essentially required to file a Chapter 9 petition).

So although the new law provides the thin veneer of a revision it is essentially a redo of the prior rejected law and appears to merely adopts the conditions necessary for a chapter 9 filing. The news reports state that opponents of the prior law are already lining up to challenge this law.

Nonetheless, I'm going to speak with Baird in a few minutes to see what his thinking is. I'll let you know how it turns out. Thanks.

Kevyn

Kevyn D. Orr  
51 Louisiana Ave. NW, Washington, DC 20001-2113 • Direct: 202.879.5560 • Fax:  
202.626.1700 •  
Cell: Redacted korr@jonesday.com

From: Corinne Ball/JonesDay  
To: "Kevyn Orr" <korr@jonesday.com>  
Cc: "Stephen Brogan" <sjbrogan@jonesday.com>  
Date: 01/31/2013 08:10 AM  
Subject: D

Kevyn--

Food for thought for your conversation with Baird and us --  
I understand that the Bloomberg Foundation has a keen interest in this area. I

Exhibit
Exhibit No.: 4
Name: Orr
Date: 9-16-13
ESQUIRE

CONFIDENTIAL

JD-RD-0000295

was thinking about whether we should talk to Baird about financial support for this project and in particular the EM. Harry Wilson--from the auto task force--told me about the foundation and its interest. I can ask Harry for contact info--this kind of support in ways "nationalizes" the issue and the project.

---

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

---